

A bill for an act

relating to notaries public; modifying fees; regulating commissions and notarial stamps and seals; providing clarifications; providing for the accommodations of physical limitations; amending Minnesota Statutes 2008, sections 357.021, subdivision 2; 358.15; 358.47; 359.01, subdivisions 2, 3, 4; 359.02; 359.03, subdivisions 1, 3, 4; 359.061; 359.12; proposing coding for new law in Minnesota Statutes, chapters 357; 359; repealing Minnesota Statutes 2008, sections 357.17; 359.05.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 2008, section 357.021, subdivision 2, is amended to read:

Subd. 2. **Fee amounts.** The fees to be charged and collected by the court administrator shall be as follows:

(1) In every civil action or proceeding in said court, including any case arising under the tax laws of the state that could be transferred or appealed to the Tax Court, the plaintiff, petitioner, or other moving party shall pay, when the first paper is filed for that party in said action, a fee of \$240, except in marriage dissolution actions the fee is \$270.

The defendant or other adverse or intervening party, or any one or more of several defendants or other adverse or intervening parties appearing separately from the others, shall pay, when the first paper is filed for that party in said action, a fee of \$240, except in marriage dissolution actions the fee is \$270.

The party requesting a trial by jury shall pay \$75.

The fees above stated shall be the full trial fee chargeable to said parties irrespective of whether trial be to the court alone, to the court and jury, or disposed of without trial, and shall include the entry of judgment in the action, but does not include copies or certified copies of any papers so filed or proceedings under chapter 103E, except the provisions therein as to appeals.

(2) Certified copy of any instrument from a civil or criminal proceeding, \$10, and \$5 for an uncertified copy.

(3) Issuing a subpoena, \$12 for each name.

(4) Filing a motion or response to a motion in civil, family, excluding child support, and guardianship cases, \$55.

(5) Issuing an execution and filing the return thereof; issuing a writ of attachment, injunction, habeas corpus, mandamus, quo warranto, certiorari, or other writs not specifically mentioned, \$40.

(6) Issuing a transcript of judgment, or for filing and docketing a transcript of judgment from another court, \$30.

(7) Filing and entering a satisfaction of judgment, partial satisfaction, or assignment of judgment, \$5.

(8) Certificate as to existence or nonexistence of judgments docketed, \$5 for each name certified to.

(9) Filing and indexing trade name; or recording basic science certificate; or recording certificate of physicians, osteopaths, chiropractors, veterinarians, or optometrists, \$5.

(10) For the filing of each partial, final, or annual account in all trusteeships, \$40.

(11) For the deposit of a will, \$20.

(12) For recording notary commission, ~~\$100, of which, notwithstanding subdivision 1a, paragraph (b), \$80 must be forwarded to the commissioner of finance to be deposited in the state treasury and credited to the general fund~~ \$20.

(13) Filing a motion or response to a motion for modification of child support, a fee of \$55.

(14) All other services required by law for which no fee is provided, such fee as compares favorably with those herein provided, or such as may be fixed by rule or order of the court.

(15) In addition to any other filing fees under this chapter, a surcharge in the amount of \$75 must be assessed in accordance with section 259.52, subdivision 14, for each adoption petition filed in district court to fund the fathers' adoption registry under section 259.52.

The fees in clauses (3) and (5) need not be paid by a public authority or the party the public authority represents.

Sec. 2. [357.171] FEES FOR NOTARIAL ACTS.

A notary public may charge and collect not more than \$5 for any notarial act performed by the notary public.

Sec. 3. Minnesota Statutes 2008, section 358.15, is amended to read:

358.15 EX OFFICIO NOTARY PUBLIC.

The following officers have the powers of a notary public within the state:

(1) every member of the legislature, while still a resident in the district from which elected; but no fee or compensation may be received for exercising these powers. The form of the official signature in these cases is: "A.B., Representative (or Senator), District, Minnesota, ex officio notary public. My term expires January 1,";

(2) the clerks or recorders of towns, and cities. The form of the official signature in these cases is: "A.B. (official title), County, Minnesota, ex officio notary public. My term expires (or where applicable) my term is indeterminate.";

(3) court commissioners, county recorders, and county auditors, and their several deputies, and county commissioners, all within their respective counties. The form of the official signature in these cases: "A.B. (official title), County, Minnesota, ex officio notary public. My term expires (or where applicable) my term is indeterminate."; and

(4) peace officers licensed under section 626.845 for the purpose of administering oaths upon information submitted to establish probable cause to any judge or judicial officer under the Rules of Criminal Procedure. The form of the official signature in these cases is "A.B., Peace Officer License Number, County, Minnesota. My license expires June 30,".

An officer using the powers of a notary public within the state pursuant to clauses (1) to (3) shall obtain an official stamp as specified under section 359.03, subdivisions 1, 3, and 4, with which to authenticate official acts.

Sec. 4. Minnesota Statutes 2008, section 358.47, is amended to read:

358.47 CERTIFICATE OF NOTARIAL ACTS.

(a) A notarial act must be evidenced by a certificate physically or electronically signed and dated by a notarial officer in a manner that attributes such signature to the notary public ~~identified on the commission.~~ The notary's name as it appears on the official notarial stamp and on any jurat or certificate of acknowledgment and in the notary's signature must be identical. The certificate must include identification of the jurisdiction in which the notarial act is performed and the title of the office of the notarial officer and ~~may~~ must include the official notarial stamp ~~or seal of office, or the notary's electronic seal~~

S.F. No. 214, as introduced - 86th Legislative Session (2009-2010) [09-0432]

pursuant to section 359.03. ~~If the officer is a notary public, the certificate must also indicate the date of expiration, if any, of the commission of office, but omission of that information may subsequently be corrected.~~ If the officer is a commissioned officer on active duty in the military service of the United States, it must also include the officer's rank.

(b) A certificate of a notarial act is sufficient if it is in English and meets the requirements of subsection (a) and it:

(1) is in the short form set forth in section 358.48;

(2) is in a form otherwise prescribed by the law of this state;

(3) is in a form prescribed by the laws or regulations applicable in the place in which the notarial act was performed; or

(4) sets forth the actions of the notarial officer and those are sufficient to meet the requirements of the designated notarial act.

(c) By executing a certificate of a notarial act, the notarial officer certifies that the officer has made the determinations required by section 358.42.

Sec. 5. Minnesota Statutes 2008, section 359.01, subdivision 2, is amended to read:

Subd. 2. **Nonresident notaries.** (a) The governor, by and with the advice and consent of the senate, may appoint as notary public a person who is not a resident of this state if:

(1) the person is a resident of Wisconsin, Iowa, North Dakota, or South Dakota, ~~and of a county that shares a boundary with this state;~~

(2) the person designates the secretary of state as agent for the service of process for all purposes relating to notarial acts and for receipt of all correspondence relating to notarial acts; and

(3) the person designates the Minnesota county in which the person's notary commission will be recorded pursuant to section 359.061.

(b) The secretary of state shall receive applications for nonresident notary appointments and commissions, shall keep a register of those persons appointed and commissioned as notaries public by the governor with the advice and consent of the senate, shall update that register when informed of a change in name and address by a notary public, shall process applications by a notary public for reappointment, shall receive fees for the performance of these functions to be deposited into the general fund, and shall perform those clerical and administrative duties associated with these functions. The governor may also receive such applications directly.

Sec. 6. Minnesota Statutes 2008, section 359.01, subdivision 3, is amended to read:

Subd. 3. **Fees.** (a) When making application for a commission the applicant must submit, along with the information required by the secretary of state, a nonrefundable fee of ~~\$40~~ \$120, which shall be forwarded by the secretary of state to the commissioner of finance to be deposited in the state treasury and credited to the general fund.

(b) Except as otherwise provided in paragraph (a), all fees shall be retained by the secretary of state and are nonreturnable, except that an overpayment of a fee is the subject of a refund upon proper application.

Sec. 7. Minnesota Statutes 2008, section 359.01, subdivision 4, is amended to read:

Subd. 4. **Application.** (a) The secretary of state shall prepare the application form for a commission. The form may request personal information about the applicant, including, but not limited to, relevant civil litigation, occupational license history, and criminal background, if any. For the purposes of this section, "criminal background" includes, but is not limited to, criminal charges, arrests, indictments, pleas, and convictions.

(b) Each applicant shall authorize in the application for a commission a background investigation, including a criminal background investigation.

(c) The commissioner may deny an application pursuant to sections 45.027 and 45.028.

Sec. 8. Minnesota Statutes 2008, section 359.02, is amended to read:

359.02 TERM.

A notary commissioned under section 359.01 holds office ~~for five years~~ until January 31 of the fifth year following the year the commission was issued, unless sooner removed by the governor or the district court, or by action of the commissioner of commerce. ~~Within 60 days~~ Six months before the expiration of the commission, a notary may ~~apply for reappointment~~ renew the notary's commission for a new term to commence and to be designated in the new commission as beginning upon the day immediately following the date of the expiration. A notary whose commission expires ~~on January 1, 2005~~, may apply for reappointment ~~six months before~~ after the expiration date. The reappointment or renewal takes effect and is valid although the appointing governor may not be in the Office of Governor on the effective day.

~~All notary commissions expire on January 31 of the fifth year following the year of issue.~~

Sec. 9. Minnesota Statutes 2008, section 359.03, subdivision 1, is amended to read:

Subdivision 1. **Requirement.** Every notary, including an ex officio notary under section 358.15, shall ~~get~~ obtain an official ~~seal~~ notarial stamp as specified in subdivision 3, with which to authenticate official acts, ~~and upon which shall be engraved the arms of this state, the words "notarial seal."~~ The ~~seal, with~~ official notarial stamp, and the notary's official ~~register, is~~ journal, are the personal property of the notary and are exempt from execution, ~~and, on death or removal from office, the register must be deposited with the court administrator of the district court of the notary's county.~~

Sec. 10. Minnesota Statutes 2008, section 359.03, subdivision 3, is amended to read:

Subd. 3. **Specifications.** ~~The seal of every notary public may be affixed by a stamp that will print a seal which legibly reproduces under photographic methods~~ The official notarial stamp consists of the seal of the state of Minnesota, the name of the notary or ex officio notary, the words "Notary Public," or "Notarial Officer" in the case of an ex officio notary, and the words "My commission expires (or where applicable) My term is indeterminate," with the expiration date shown thereon or may be an electronic form on it and must be able to be reproduced in any legibly reproducible manner. A physical seal used to authenticate a paper document The official notarial stamp shall be a rectangular form of not more than three-fourths of an inch vertically by 2-1/2 inches horizontally, with a serrated or milled edge border, and shall contain the information required by this subdivision.

Sec. 11. Minnesota Statutes 2008, section 359.03, subdivision 4, is amended to read:

Subd. 4. **Electronic seal.** ~~A notary's electronic seal shall contain the notary's name, jurisdiction, and commission expiration date, and shall be logically and securely affixed to or associated with the electronic record being notarized.~~ The information required by this section may be affixed electronically and shall be logically and securely affixed or associated with the electronic record being notarized.

Sec. 12. Minnesota Statutes 2008, section 359.061, is amended to read:

359.061 RECORD OF COMMISSION; ~~CERTIFICATE.~~

Subdivision 1. **Resident notaries.** The commission of every notary commissioned under section 359.01 shall be recorded in the office of the court administrator of the district court of the notary's county of residence or in the county department to which duties relating to notaries public have been assigned under section 485.27, in a record kept for that purpose.

Subd. 2. **Nonresident notaries.** The commission of a nonresident notary must be recorded in the Minnesota county the notary designates pursuant to section 359.01, subdivision 2, clause (3), in the office of the court administrator of the district court of the Minnesota county that borders the county in which the nonresident notary resides of that county or in the county department to which duties relating to notaries public have been assigned under section 485.27.

Subd. 3. **Certificate of court administrator.** The court administrator, when requested, shall certify to official acts in the manner and for the fees prescribed by statute or court rule.

Subd. 4. **County notary certificate.** The county department, to which duties relating to notaries public have been assigned under section 485.27, shall certify to official acts under this section for the fee of \$..... and in the form of:

State of Minnesota

County

"I the undersigned _____, in and for said county and state, do hereby certify that _____, whose name is subscribed to on the attached document held the office of notary public in said county and state at the date of said subscription and was authorized under the laws of this state to take acknowledgments, to administer oaths, take depositions, acknowledgments of deeds, and other written instruments, and exercise all such powers and duties authorized by the laws of Minnesota as notary public. I further certify that I have compared the subscribed signature to the signature on file in this office and believe them to be the same.

Signed this date _____ in the county of _____, state of Minnesota."

Signature

Title

Sec. 13. **[359.091] ACCOMMODATION OF PHYSICAL LIMITATIONS.**

(a) A notary public may certify as to the subscription or signature of an individual when it appears that the individual has a physical limitation that restricts the individual's ability to sign by writing or making a mark, pursuant to the following:

(1) the name of an individual may be signed, or attached electronically in the case of an electronic record, by another individual other than the notary public at the direction and in the presence of the individual whose name is to be signed and in the presence of the notary public. The signature may be made by a rubber stamp facsimile of the person's

actual signature, mark, or a signature of the person's name or mark made by another and adopted for all purposes of signature by the person with a physical limitation; and

(2) the words "Signature written by" or "Signature attached by" in the case of an electronic record, "(name of individual directed to sign or directed to attach) at the direction and in the presence of (name as signed) on whose behalf the signature was written" or "attached electronically" in the case of an electronic record, or words of substantially similar effect must appear under or near the signature.

(b) A notary public may use signals or electronic or mechanical means to take an acknowledgment from, administer an oath or affirmation to, or otherwise communicate with any individual in the presence of such notary public when it appears that the individual is unable to communicate verbally or in writing.

Sec. 14. Minnesota Statutes 2008, section 359.12, is amended to read:

359.12 ADMINISTRATIVE ACTIONS AND PENALTIES.

Every notary who shall charge or receive a fee or reward for any act or service done or rendered as a notary greater than the amount allowed by law, or who dishonestly or unfaithfully discharges duties as notary, or who has pleaded guilty, with or without explicitly admitting guilt, plead nolo contendere, or been convicted of a felony, gross misdemeanor, or misdemeanor involving moral turpitude, is subject to the penalties imposed pursuant to section 45.027, ~~except that~~. A notary may be removed from office only by the governor ~~or~~ the district court, or the commissioner of commerce. The commissioner of commerce has all the powers provided by section 45.027 and shall proceed in the manner provided by that section in actions against notaries.

Notwithstanding section 359.03, subdivision 1, upon removal from office by the commissioner of commerce, a notary public shall deliver the notary's official notarial stamp to the commissioner of commerce.

Sec. 15. **REPEALER.**

Minnesota Statutes 2008, sections 357.17; and 359.05, are repealed.

357.17 NOTARIES PUBLIC.

The maximum fees to be charged and collected by a notary public shall be as follows:

- (1) for protest of nonpayment of note or bill of exchange or of nonacceptance of such bill; where protest is legally necessary, and copy thereof, \$1;
- (2) for every other protest and copy, \$1;
- (3) for making and serving every notice of nonpayment of note or nonacceptance of bill and copy thereof, \$1;
- (4) for any affidavit or paper for which provision is not made herein, \$1 per folio, and 20 cents per folio for copies;
- (5) for each oath administered, \$1;
- (6) for acknowledgments of deeds and for other services authorized by law, the legal fees allowed other officers for like services;
- (7) for recording each instrument required by law to be recorded by the notary, \$1 per folio.

359.05 DATE OF EXPIRATION OF COMMISSION AND NAME TO BE ENDORSED.

Every notary public, except in cases provided in section 359.03, subdivision 3, taking an acknowledgment of an instrument, taking a deposition, administering an oath, or making a notarial protest, shall, immediately following the notary's physical or electronic signature to the jurat or certificate of acknowledgment, endorse the date of the expiration of the commission; such endorsement may be legibly written, stamped, printed upon the instrument, but must be disconnected from the seal, and shall be substantially in the following form: "My commission expires," Except in cases provided in section 359.03, subdivision 3, every notary public, in addition to signing the jurat or certificate of acknowledgment, shall, immediately following the signature and immediately preceding the official description, endorse thereon the notary's name with a typewriter, print the same legibly with a stamp, with pen and ink, or affix by electronic means; provided that the failure so to endorse or print the name shall not invalidate any jurat or certificate of acknowledgment.